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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,665	02/15/2001	Yiqun Wang	1001.1412101	2225

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EXAMINER

ODLAND, KATHRYN P

ART UNIT PAPER NUMBER

3743

DATE MAILED: 01/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/784,665

Applicant(s)

WANG ET AL.

Examiner

Kathryn Odland

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

This is a response to the amendment dated December 11, 2003. Claims 1-21 are pending.

### ***Response to Arguments***

1. Applicant's arguments filed December 11, 2003 have been fully considered but they are not persuasive.

In response to the arguments with regard to the 35 U.S.C. 102(b) rejection based on McIntyre et al., applicant argues, "McIntyre et al. do not disclose a seal the prevents air passage into the lumen that is in fluid communication with the inflatable member, because McIntyre et al. disclose a port member 20 the includes a side leg 22 that is in fluid communication with the lumen that is in fluid communication with the inflatable member. Clearly, air can reach the aforementioned lumen simply by passing through the side leg into the lumen." Although it is agreed that McIntyre et al. do indeed have a port member 20, column 7, lines 36-55 clearly disclose that "a three-way valve or stopcock (not shown) may be positioned between the syringe and the side leg." This additional seal would ensure/allow that the port to be closed and allowing the seal (via 26/28) to function as claimed and prevent air passage into the lumen that is in fluid communication with the inflatable member.

2. Applicant's arguments, see Paper No. 5, filed December 11, 2003, with respect to the 35 U.S.C. 102(b) rejection based on Lafontaine et al. have been fully considered

and are persuasive. The 35 U.S.C. 102(b) rejection based on Lafontaine et al. has been withdrawn.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-6, 8-13, and 15-20 are rejected under 35 U.S.C. 102(b) as being anticipated by McIntyre et al. in US Patent No. 5,334,153.

McIntyre et al. disclose a catheter assembly (generally 1) having a first tube having a proximal end, a distal end, and a first lumen (5) extending therethrough, wherein the lumen is in fluid communication with an expandable member (8) proximate the distal end of the first tube, as recited in column 5, lines 30-65 and seen in figures 1 and 4; a first port (such as at 20) on the proximal end of the first tube in fluid communication with the first lumen, as recited in columns 5 and 6; and a seal (26/28) releasably attached to the first port so as to substantially prevent the passage of air into the first lumen, wherein the first lumen has a pressure less than atmospheric pressure, as stated in column 2, lines 60-67 and column 7; an expandable member is a balloon (8), as recited in column 4, line 14; a seal that is a polymer, as recited in column 5, lines 55-60 and column 6, lines 1-3; a seal that is rubber, as recited in column 5, lines 55-60 and column 6, lines 1-3, wherein rubber is one of the suitable materials

disclosed; a seal that is a self-sealing rubber septum, as recited in column 5, lines 55-38 and column 6, lines 1-3; a seal that is plastic, wherein latex encompasses plastic; a catheter assembly that prior to use the first lumen is filled with a fluid, as recited in column 7; a balloon catheter (1) with a proximal end and a distal end, having a first tube having a proximal end, a distal end, and a first lumen (5) extending therethrough, wherein the first tube includes a first port (generally at 20) on a proximal end thereof in fluid communication with the first lumen; a balloon (8) disposed at the distal end of the catheter and in fluid communication with the first lumen, as recited in columns 1 and 2; a seal (26/28) releasably attached to the first port so as to substantially prevent the passage of air into the first lumen wherein the first lumen is substantially free of air therein, as recited in column 5, lines 50-68 and column 6, lines 1-3; a method of preparing a balloon catheter (1) via providing a balloon catheter including a first tube having a proximal end, a distal end, and a first lumen (5) extending therethrough, wherein the first tube has a first port (generally at 20) in fluid communication with the first lumen, and a seal (26/28) releasably attached to the first port so as to substantially prevent the passage of air into the first lumen with a balloon disposed proximate the distal end of the catheter in fluid communication with the first lumen, as recited in column 5; providing a sealing device that is detachably connectable to the first port, wherein the sealing device includes a seal detachably secured therein, as recited in column 5 and seen in figure 1; connecting the sealing device to the first port; using the sealing device

to pull vacuum until the air pressure within the first lumen is substantially less than atmospheric pressure followed by placing the seal over the first port; and disconnecting the sealing device from the first port, as recited in column 2, lines 60-68, column 5, column 6, and column 7.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 7, 14, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over by McIntyre et al. in US Patent No. 5,334,153.

McIntyre et al. disclose the invention with the exception of a first tube that includes a chemical coating capable of binding a quantity of CO.sub.2, N.sub.2, and O.sub.2. On the other hand, coatings are well known in the art and it would be obvious to one with ordinary skill in the art to modify the invention to include a coating that is capable of binding a quantity of CO.sub.2, N.sub.2, and O.sub.2 for the purpose of preventing escape of air and other gases, as discussed in column 1, lines 25-40.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathryn Odland whose telephone number is (703) 306-3454. The examiner can normally be reached on M-F (7:30-5:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A Bennett can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

KO

  
Henry Bennett  
Supervisory Patent Examiner  
Group 3700